IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

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SUPREME COURT, U.S.

No. 82-1795

CAPITAL CITIES CABLE, INC., ET AL., PETITIONERS

v.

RICHARD A. CRISP, DIRECTOR, OKLAHOMA
ALCOHOLIC BEVERAGE CONTROL BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT

MOTION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT

Pursuant to Rule 38 of the Rules of this Court the Solicitor General requests that the Federal Communications Commission be allotted an additional 15 minutes to present oral argument in this case in support of petitioners. Petitioners have declined our request to cede the Commission any of their argument time for this purpose. In the alternative, we request that the time allotted to petitioners be divided so as to allot 15 minutes to petitioners and 15 minutes to the Commission.

This case presents the question whether a state's ban on liquor advertising, as applied to cable retransmission of out-of-state broadcast signals, is preempted by federal law or is in conflict with the First Amendment commercial speech doctrine. The Commission has a substantial interest in the question of preemption raised in this case, because of its responsibility for fostering a "rapid, efficient, Nationwide, and world-wide wire and radio communications service." 47 U.S.C. 151, 152(a). The Commission has found it expedient to preempt nonfederal regulation of the content of cable programming, including

advertising, has prohibited the deletion of advertising from cable retransmissions of broadcast signals, and has required, under certain circumstances, the retransmission of out-of-state broadcast signals over cable systems without deletion or modification. The state law at issue in this case is incompatible with the Commission's regulatory decisions. The case thus raises the important question of the application of otherwise preemptive federal regulations in the face of conflicting state laws enacted pursuant to Section 2 of the Twenty-first Amendment.

Oral presentation of the views of the Commission would be especially appropriate in this case because the issue of preemption, which if decided in favor of petitioners would be dispositive of the case, was not raised in the petition for a writ of certiorari, but was raised by the Commission in its memorandum as amicus curiae. In granting the petition, the Court directed the parties to address the question posed by the Commission: whether the State's regulation of liquor advertising, as applied to out-of-state broadcast signals, is valid in light of existing federal regulation of cable broadcasting. We submit that the Commission is in the best position to assist this Court in obtaining a fuller perspective on the complex regulatory scheme involved in this case, and on the ramifications of the state provision at issue for the national system of cable communications.

Respectfully submitted.

REX E. LEE
Solicitor General

NOVEMBER 1983